

### **REMARKS**

This is in full and timely response to the Restriction Requirement made in the Office Action mailed on May 17, 2007.

Reexamination in light of the following remarks is respectfully requested.

### **Restriction Requirement**

The Restriction Requirement of May 17, 2007 asserts an existence of the following patentably distinct inventions:

- **Group I: Claims 1-10**, drawn to a wind power generator with controller, classified in class 290, subclass 55, and
- **Group II: Claims 11 and 12**, drawn to a process of making a structure, classified in class 52, subclass 123.

### **Election**

The Applicant, through its representatives and attorneys, hereby provisionally elects, WITH traverse, the invention of the alleged **Group I**.

### **Traversal**

For the reasons provided hereinbelow, the Restriction Requirement made within the Office Action mailed on May 17, 2007 is respectfully traversed.

**1. The above-identified application is an application under 35 U.S.C. §371**

The above-identified application was filed under 35 U.S.C. §371 and 37 C.F.R. §§1.494 or 1.495, being based upon international application No. PCT/JP2002/07465 having an International filing date of July 24, 2002.

Accordingly, M.P.E.P. §1893.03(d) provides that the principles of unity of invention are used to determine the types of claimed subject matter and the combinations of claims to different categories of invention that are permitted to be included in a single international or national stage patent application.

Unity of invention, not restriction practice, is applicable in international applications and in national stage (filed under 35 U.S.C. §371) applications.

However, the Restriction Requirement made by the Examiner in the Office Action of May 17, 2007 is based upon 35 U.S.C. §121 and not under the principles of unity of invention. Accordingly, the Restriction Requirement is improper at least for this reason.

When making a lack of unity of invention requirement, the examiner must (1) list the different groups of claims and (2) explain why each group lacks unity with each other group (i.e., why there is no single general inventive concept) specifically describing the unique special technical feature in each group. M.P.E.P. §1893.03(d).

However, the Restriction Requirement of May 17, 2007 fails to explain why each group lacks unity with each other group.

Thus, the Restriction Requirement is improper at least for this reason.

2. *No burden to the Examiner*

If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to distinct or independent inventions. M.P.E.P. §803.

Specifically, practice and procedures within USPTO also dictate that not only must the art be searched within which the invention claimed is classifiable, but also all analogous arts regardless of where classified. M.P.E.P. § 904.01(c).

Here, the Restriction Requirement contends that the alleged Group I is classified in class 290, subclass 55, and that the alleged Group II is classified in class 52, subclass 123.

As such, the search and examination of an entire application can be made without serious burden, and the examiner must examine it on the merits, even though the application may include claims to distinct or independent inventions. M.P.E.P. §803.

Withdrawal of this Restriction Requirement and examination of all pending claims is respectfully requested.

Applicant believes no fee is due with this response. If any fee is required or any overpayment made, the Commissioner is hereby authorized to charge the fee or credit the overpayment to Deposit Account # 18-0013.

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Respectfully submitted,

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